19 41

File No. O Foreigners 41

Legal Department 4L

A BRANCH

Subject:— Opinions under the Foreigners Act, 1864

p. 19

File No. O Foreigners/41

Gen. 194 e.

C O N T E N T S.

Legal Department File No. O. Foreigners/41.

S.No.	Compilation No.	Subject	Pages.
		Opinions under the Indian Foreigners Act, 1864.	
1.	R.I.No.5610 26-6-1941. O.No.6823 17-7-1941.	- S. 4 - Whether a deportee who has returned to British India without a license granted by the Central Government may be apprehended and detained in safe custody until the receipt of order of discharge from the Central Government or can by released on bail by the Residency Magistrate.	

OK 1614
NB 1114

R.I.No.5610
26-6-41.

Submitted.

2. A certain deportee who was removed from the British India under an order issued under the provisions of the Foreigners Act, 1864, had returned to British India without licence. He was therefore apprehended and has been detained under section 4 of the Foreigners Act, 1864. There are at present two criminal cases pending against him one under section 406, I.P.C. and the other under section 46(6) of the C.P.Act, in the Court of the Resident First Class Magistrate, Kurla. As the deportee was under trial for these offences orders on the usual lines were issued in P.& G.D., G.R.No.S/43/711, dated the 7th June 1941 under section 4 of the Act. Under those orders the deportee is to be discharged after the disposal of the two cases, if he is aquitte or on the expiry of his term of imprisonment, if he is convicted, on condition that he removed himself under police escort from British India by rail to to his native place in Cutch and undertook not to return. The deportee has therefore been kept in custody pending the decision of the two cases. Meanwhile it appears that the Migistrate has passed an order releasing the deportee on bail. In the circumstances the R.L.A. has been asked to advise whether the order of the Resident Magistrate should be followed and the deportee should be released now but rearrested after the cases against him are disposed of or whether the orders in the G.R. should be followed and the deportee should be detained in prison till the cases against him are disposed of.

3. The R.L.A.'s opinion referred to by D.S.P.&S.D. in para 4 of his note dated 24-6-41 appears to be the one given in para 3 of R.L.A's U.R. to P.& S.D. No.6271 dated the 6th August1938. It will however be seen that in the case referred to in that opinion the person was admitted to bail under section 16 ~~xx~~ of the Foreigners Act,1864, and, as section 16 has not yet been brought into force it was held that the bail was in law invalid. In the present case however it appears that the Magistrate has admitted the accused to bail under the provisions of the Cr.Pr.Code and not under section 16 of the Foreigners Act. (Vide A at P.1 ante). If so, the order of bail is in respect of the custody of the accused for offences under section 406, I.P.C. and section 46(5) of the D.P. Act; and is therefore perfectly valid. The order of bail is however not in respect of the detention of the deportee under section 4 of the Foreigners Act, and he can therefore be continued to be detained in prison under section 4 of the Act notwithstanding the order of the Magistrate for his release on bail. The District Magistrate, B.S.D. should therefore be informed that he should follow the orders of Govt. in P. & S.D., G.R.No.S.43/711, dated 7th June 1941; and detain the deportee in prison till the cases against him are disposed of. It is however for consideration whether before giving a definite opinion in the matter, the P.& S.D. should be asked to ascertain as to under what specific provisions of the law the deportee was ordered by the Magistrate to be released on bail.

Sd.

A.S.

I agree.

Sec. 4 of the Foreigners Act, 1864, inter alia provides that a deportee who has returned to British India without a license in writing granted by the Central Govt. may be apprenhended and detained in safe custody until he shall be discharged by order of the Central Govt. upon such terms and conditions as the said Central Govt. shall deem sufficient etc. By Govt. of India Notn. Home Deptt.(Political) No.81/12/36 dated 29th March 1938, the functions of the Central Govt. under sections 3, 3A and 4 of the Foreigners Act have been entrusted to the Provincial Governments with their consent with effect from 1st April 1938 under sec.124 of the Govt. of India Act,1938. Consequently by G.R.(Political and Services Deptt.) No.S.43/711 dated the 7/8th June 1941, the Govt. of Bombay ordered under sec.4 that Bachu Nathu a deportee who returned to Bombay without a license should be discharged forthwith <u>after the disposal of the two cases pending against him</u>, if he is acquited in both cases, on condition that he removes himself under police escort from British India by rail to his native place in Cutch State and undertakes not to return; and if he is convicted in either or both cases he should be discharged on the expiry of his term of imprisonment on the same condition as specified above. The order of the Resident Magistrate granting bail to the deportee in the two criminal cases pending against him is ineffective since the continued detention of the deportee section 4 of the Foreigngners Act, and the deportee can be discharged only on the condition stated in Govt. orders contained in the aforesaid G.R.

The additional Dist. Magistrate should inform the Resident Magistrate that the deportee can not be released on bail in view of the orders of Govt. issued under sec.4 of the Foreigners Act, 1864.

I.D.

A.L.R. I agree. Reply may be as in A.S.note. No reference to bail under section 16 of the Foreigners Act is necessary, as that section is not in force.

I.D.

R.L.A.

Id.

U.R. to P.& S.D. No.6223 dt.17-7-1941.

R.I.No.10513
13-11-1941.

Submitted.

2. One Latif Kattan, a Foreigner, was ordered under section 3 of the foreigners Act, 1864, to remove himself from Br.India (Please see the Govt. order dated the 15-1-1940 at page 7 of P.& S.D.file 6-43/1424). The foreigner returned to Br. India in contravention of that order and was arrested in Bombay on the 16-6-1941. It appears that an externment order had also been served upon him by the Commr. of Police, Bombay, under section 27 of the City of B'bay Police Act, 1902. On his arrest in June he was charged under section 128 of the City of B'bay Police Act for breach of the externment order and sentenced to suffer rigorous imprisonment for 9 months. He is undergoing the sentence at present. His further stay in Br. India after the expiry of the sentence is considered undesirable and the Commissioner of Police, suggests that he should be re-deported to Iraq. The Govt. of India consider that as the foreigner on his arrest was not "detained in custody" as required by section 4 of the Foreigners Act, it will not be possible to attach to his discharge the condition that he should remove himself from Br.India. The Govt. of India considers that one of the following two course can be followed:

i) to make a fresh order of deportation under section 3 and on his failure to

comply with it, to resort to section 4; or

ii) immediately on his release from jail in January 1942 to take action under section 4 for his having wilfully returned to Br.India without a license in writing, as required by that section. The P.& S.D. does not agree with this view of the Govt. of India and considers that an order of redeportation under section 4 can be issued now and served upon him immediately on his release. The R.L.A. is requested to advise whether there is any legal objection to this course.

3. It appears that the course suggested by the P.&.S.D. is not free from legal objection. The functions of the Central Govt. under sections 3 & 4 of the Foreigners Act, 1864, have been entrusted to the Provl. Govt. by the Govt. of India, H.D., Political, Notification No.51/12/36,dated the 29-3-1938. In this case an order was passed by the Provl.Govt.under section 3 of the Act directing Latif Kattan to remove himself from Br.India. The foreigner returned to Br.India without permission. Section 4 provides interalia that if any foreigner, having removed himself from Br.India in consequence of an order issued under any of the provisions of the Act, shall wilfully return thereto without a license in writing granted by the Central Govt. such foreigner may be apprehended and detained in saft custody, until he shall be discharged there from by order of the Central Govt. upon such terms and conditions as the Central Govt. shall deem sufficient for the peace and security of Br.India,

oreigners Act, 1864, for returning without a license after removal from British India it is clear that thereafter he was not "detained in safe custody" as provided in that section. He was in fact tried for breach of an externment order under sec. 128 of the City of Bombay Police Act, 1902, and sentenced to suffer rigorous imprisonment for 9 months. While serving the period of imprisonment he cannot strictly be said to be detained in safe custody" within the meaning of sec.4, so that he might be discharged subject to the condition that he should remove himself from British India. In the circumstances the proper course would be either to make a fresh order under sec.3 or to have Latiff apprehended and detained in safe custody under sec.4 immediately on his release from prison in January 1942; and in case either of them is not suitable, to request the Govt. of India to issue an order under sec. 3(2) (C) of the Foreigners Act, 1940.

apprehended and detained in safe custody

Id.

A.L.R.

What is the authority empowered to 'apprehended' the foreigner contravening the provisions of sec.4? of sec.14.

Is the "apprehension (and detention in safe custody until discharge)" under sec.4 at the instance and under the orders of the Central Govt. (or by delegation of the Provl. Govt.) ?

Id.

and of the allies of His Majesty, and of the neighbouring Princes and States. It is true that the ~~ga~~ foreigner was arrested also for contravention of the deportation order issued by Govt. ~~bat~~ in that case it was necessary under section 4 to detain him in safe custody pending his discharge on conditions. But Latiff Kattan was not detained in safe custod immediately on his arrest. He was charged under section 128 of the City of B'bay Police Act and sentenced to 9 months imprisonment which he is undergoing now. His detention in prison for undergoing the sentence cannot be said to be detention in safe custody within the meaning of section 4. Consequently it does not seem legally feasible to issue an order of conditional discharge in his case at this stage; and to serve that order on ~~him~~ immediately on ~~him~~ him immediately on his release from jail. The view taken by the Govt. of India in para 2 of their letter dated the 24-10-1941 appears to be correct.

Sd.

A.S.

I think the view expressed by the Govt. of India in their letter at p.7 ante is correct.

The letter from the Commr. of Police B'bay at p.1 ante does not specifically state that on 16-6-41 the foreigners Latiff Kattan was apprehended under section 4 of the Foreigners Act, 1864. However even assuring that Latiff Kattan was on that date apprehended also under sec.4 of the

Office,

Resubmitted.

It is informally understood from the P & S.D. that orders of apprehension & detention are not issued by the Provl.Govt. The authority appears to be the Commr. of Police (Pl.see the S.OR. underlying Act 3 of 1915 and S.3A.)

Id.
22/11.

A.S.

A.L.R.

In the absence of any specific mention of the authority entitled to apprehend the foreigners referred to in sec. 4 I am not sure that any Police Officer would be justified in apprehending and detaining such persons. Action under S.3A is quite different However perhaps it is not necessary to purpose this question in this case.

On further consideration I think that the view taken by the g Govt.of India and endorsed by office is too narrow in that it requires an ad hoc apprehension and detention for the purposes of enabling Govt. to pass the relevant discharge order. The wider power of apprehending and detaining in safe custody until the making of a conditional.

Office of the R.L.A.

Seen and returned.

2. The appears to be no legal objection to Government passing an appropriate order under section 4 of the Foreigners Act (III of 1864) in respect of a Foreigner who has been apprehended under that section and whose detention in safe custody includes a period of substantive imprisonment in respect of an offence of which he has been lowfully convicted. Since, However, this view differs from that taken at pp.7-8 ante it would be advisable to refer the matter again to the Government of India for reconsideration in consultation with their legislative Department.

Sd.

Remembrancer of Legal Affairs.

U.R. to P.& S.D. No.10482, dated the 6th Dec.41

Submitted for sign.

11649
15-12-41.

Submitted.

2. It appears that the Commissioner of Police had passed orders for externment of a Foreigner from Iran by name Mohomed Hussein under section 27(2A) of the City of Bombay Police Act, 1902 and also on 6-10-41 authorised his arrest under section 3A of the foreigners Act 1864 and detained him in the Byculla Jail pending orders of Govt. on 2-12-41 Govt. issued an ~~xxxx~~ order under section 3 of the Foreigners Act, 1864, ordering the foreigner to remove himself forthwith from British India, via the Port of Bombay. The Commissioner of Police reports that the deportee was taken over from the Jail on the 4th December 1942 and was served with the deportation order. The deportee is willing to abide by the orders of Govt. and to leave British India. He has been duly vaccinated and his travel documents have been obtained from the Royal Consul from Iran. It however appears that for the present there is not steamer available for Iran and it is not known definitely when a steamer will be available for Iran. In the circumstances the Commissioner of Police has requested Govt. to pass orders for the deportee's detention in the Byculla Jail, pending his departure by steamer to Iran. The D.S. P.& D. says that it does not appear that orders for detention can be passed by Govt. under section 3, but that the police can apparent-ly keep him in custody as at present without any formal orders of Govt., until he is deported. The H.L.A. has been asked to advise on the feasibility of the orders required by the

Commissioner of Police.

3. Section 3 of the Foreigners Act, 1864, provides that the Central Govt. may, by writing, order any foreigner to remove himself from British India, or to remove himself therefrom by a particular route specified in the order. Sub-section(1) of section 3A provides that whenever in a Presidency-town the Commissioner of Police ---------- considers that the Central Govt. should be moved to issue an order under section 3 in respect of any foreigner who is within the limits of such Presidency town ---------- he may report the case to the Central Govt. and at the same time issue a warrant for the apprehension of such foreigner. Sub-Section (4) of that section provides that when foreigner for whose apprehension a warrant has been issued under sub-section(1) is produced or appears before the officer issuing such warrant, such officer may direct him to be detained in custody pending the orders of the Central Govt. or release him on his executing a bond with or without sureties to appear at a specified place and time and thereafter if and when required until such orders are obtained. Sub-section (5) provides that any officer who has in accordance with the provisions of sub-section (4), ordered a foreigner to be detained or released on his executing a bond shall forthwith report the fact to the Central Govt. On ... ..ceipt of a report under this sub-section, the Central Govt. shall without

delay either direct that the foreigner be discharged or make an order for the removal of such foreigner in accordance with the provisions of section 3. Section 4 enacts that if any foreigner ordered to remove himself from British India, or ordered to remove himself therefrom by a particular route, shall neglect or refuse so to do, or if any foreigner, having removed himself from British India in consequence of an order issued under any of the provisions of the Act, or having been removed from British India under any of the said provisions, shall willfully return thereto without a license in writing signed by the Central Govt. such foreigner may be apprehended and detained in safe custody until he shall be discharged therefrom by order of the Central Govt. upon such terms and conditions as the said Central Govt. shall deem sufficient for the peace and security of British India, and of the allies of her Majesty, and of the neighbouring prices and States. The powers of the Central Govt. under sections 3,3A and 4 have been delegated to the Provincial Govt. If these provisions are read together it would be clear, (1) that a foreigner can be detained in custody by the Commissioner of Police only till Govt. issues an order under section 3; (2) as soon as Govt. issues an order under section 3, ordering the foreigner to remove himself from the British India or to remove himself

therefrom by a particular route, he is to be released from the custody in order to enable him to obey the order and (3) if thereafter he neglects or refuses to remove himself from the British India or remove himself therefrom by the particular route specified in the order, he may be apprehended and detained in safe custody until he shall be discharged therefrom by order of the Govt. In the present case as soon as Govt. issued an order under section 3 ordering the foreigner to remove himself from Britsh India via the Port of Bombay the foreigner was entitled to be released from the detention under section 3 A. It cannot be said that the deportee has refused or neglected to obey the order of Govt. to remove himself from British India by the Port of Bombay, as he is willing to abide by the order but cannot get the necessary passage. Action under section 4 is therefore not competent. It appears that in the circumstances it would be necessary to keep the deportee at large till a passage can be obtained for him for Iran. The proposal of the Commissioner of Police that Govt. should issue orders to detain him in the Byculla Jail pending his departure to Iran is outside the scope of the Act, and is consequently not feasible.

Sd.
20/12/41.

A.S.

Section 4 of the Foreigners Act, 1864 inter alia provides that if any foreigner ordered to remove himself from Br. India or

ordered to remove himself therefrom by a particular route, shall neglect or refuse so to do, such foreigner may be apprehended and detained in safe custody. The word "apprehended" and clearly indicates that the man who has been served with an order of removal under section 3 will have to be released from custody so that he should arrange to remove.

Office of the R.L.A.

Since section 4 of the Foreigners Act, 1864 will not be applicable to the facts of this case and section 3 does not provide for detention pending departure of the foreigner deportee, the object in view may be achieved by cancelling the order at page 17 ante. Thereafter the Commissioner of Police can again take appropriate action under section 3A and later a fresh order under section 3 could be passed and served on the deportee a day or two before the next available steamer is due to sail from Bombay. Attention is however invited to the ruling reported in 26 B.L.R.1252 in view of which prolonged or indefinite detention would not be advisable.

Sd.
26/12

Remembrancer of Legal Affairs.

U.R. to P. & S.Deptt. No.11142,dated 26-12-1941.